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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,335	07/31/2001	Thomas E. Anderson	41007.P006	4127

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HOUSTON ELISEEVA
4 MILITIA DRIVE, SUITE 4
LEXINGTON, MA 02421

EXAMINER

NGUYEN, MINH CHAU

ART UNIT PAPER NUMBER

2145

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,335

Applicant(s)

ANDERSON ET AL.

Examiner

MINH-CHAU N. NGUYEN

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-20 and 22-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-20 and 22-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1, 2, 6, 17, 18, 22, 31, 32, and 37-45 are rejected under 35 U.S.C. 102(e) being anticipated by Foster et al. (US. 2003/0202536, "Foster", hereafter).
2. Regarding claims 1, 6, 17, 22, 31, 32, and 37-39, Foster discloses a method comprising: determining by a first network management device, separate and distinct from a first router of a network, whether the first router is meeting a service level for a first group of network traffic of the network serviced by the first router; and regulating a second group of network traffic of the network, also being serviced by said first router, to assist the first router in meeting the service level for the first group of network traffics the second group of network traffic being separate and distinct from said first group of network traffic (network manager 357, figure 3A, controls connection to ensure sufficient resource available for one by limiting the other, paragraph 69).

3. Regarding claims 2 and 18, Foster discloses wherein said service level is a selected one of a service level goal and a service level commitment of said first router for said first group of network traffic of the network serviced by said first router (service level is in accordance with class of service (COS), which, among other factors, guarantee level of bandwidth, paragraph 69).
4. Regarding claims 40 and 43, Foster discloses wherein said method further comprises: monitoring packet drop rate associated with said first group of network traffic; and determining whether the first router is meeting said service level for said first group of network traffic based on the packet drop rate (determining whether a content (packet) analysis or load balancing is met based on the rejection of a transmittal of the content) (paragraph 64-66, 68-69).
5. Regarding claims 41 and 44, Foster discloses wherein said method further comprises: monitoring a volume of data transmitted by the first router; and determining whether the first router is meeting said service level for said first group of network traffic based on the volume (paragraph 3,69).
6. Regarding claims 42 and 45, Foster discloses wherein said method further comprises: monitoring an average turn-around time of packets transmitted by the first router; and determining whether the first router is meeting said service level

for said first group of network traffic based on the average turn-around time of the packets (paragraph 50,69).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 4, 7-16, 19, 20, 23-30 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster, as applied to claim 1, above.
8. Regarding claims 3, 4, 10-16, 19, 20, 26-30 and 34-36, Foster discloses the invention substantially, as claimed, including an inventive concept that is applicable for assessing network resource and limiting a network traffic to guarantee level of service QOS or to accommodate another network traffic to meet the QOS level. To apply Foster's inventive concept to regulate network traffic from one group over another, regardless of distinction, separation, same or different sources or destinations, would have been obvious to one of ordinary skill in the art that was a matter of implementation choice, which depends upon individual desire, does not produce unexpected result.
9. Regarding claims 7-9 and 23-25 Foster discloses the invention substantially, as claimed, as described in claim 6, including an inventive concept that is applicable

for assessing network resources and limiting a network traffic to guarantee level of service QOS or to accommodate another network traffic to meet the QOS level. To apply Foster's inventive concept to regulate network traffic from one group over another, regardless of where the monitoring function has been perform, or selecting reliability or service level or performing monitoring and regulating from the same or different devices, would have been obvious tone of ordinary skill in the art that was a matter of implementation choice, which depend upon individual desirable, does not produce unexpected result.

Response to Arguments

Applicant's arguments filed 08/01/06 have been fully considered but they are not persuasive.

1. (A) The invention of Foster does not disclose the quality of service processes could be applied to the claimed routers.

As to point (A), the patent does disclose the quality of service processes could be applied to the claimed routers (Foster teaching related directly to network switches or routers, paragraph 20. Moreover, service level is in accordance with class of service (COS), which among other factors, guarantee level of bandwidth, is applied to the network switches or routing devices (routers) paragraph 69). Furthermore, according to dictionary, "router receives transmitted messages and forwards then to their correct destinations over the most efficient available route"; and "switch, in networking, is a device capable of forwarding

Art Unit: 2145

packets to the ports associated with particular network addresses". In the other word, the switch forwards the received packets (messages) to the particular destinations (which includes network addresses and ports). Thus, a function of switch is equivalent to a function of router. Therefore, Forster does teach the routers and QOS (COS) is applied to these routers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MINH-CHAU N. NGUYEN whose telephone number is (571)272-4242. The examiner can normally be reached on Monday-Friday from 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JASON D. CARDONE can be reached on (571) 272-6159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2145

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Examiner: Minh-Chau Nguyen

Art Unit: 2145



JASON CARDONE
SUPERVISORY PATENT EXAMINER